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December 18, 2008

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 30, 2008

Case Number: TSO-0656

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the DOE should not restore the individual's access authorization at this time.

I. Background

On October 3, 2007, and December 22, 2007, the individual was arrested and charged with Driving While Intoxicated (DWI). Based in part on those arrests, the DOE Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the individual on February 4, 2008. Exhibit 22. Because the security concern remained unresolved after the PSI, the LSO requested that the individual be interviewed by a DOE consultant psychiatrist (DOE psychiatrist). The DOE psychiatrist evaluated the individual on April 7, 2008, and issued a report on April 20, 2008. *See* Exhibit 11. The LSO ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the LSO proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. Specifically, the DOE characterized this information as indicating that the individual (1) has deliberately misrepresented, falsified, or omitted significant information during a personnel security interview, or proceedings conducted pursuant to Part 710 Sections 710.20 through 710.31; (2) is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse; (3) has an illness or mental condition which in the opinion of a

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

psychiatrist causes, or may cause, a significant defect in his judgment or reliability; and (4) has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security. Exhibit 1 (citing 10 C.F.R. § 710.8(f), (h), (j), (l)).

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on July 30, 2008.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from a licensed professional counselor, the individual's former mother-in-law, two friends and former coworkers, a current coworker, the individual, and the DOE psychiatrist. The DOE Counsel submitted 24 exhibits prior to the hearing, and counsel for the individual presented four exhibits.

II. Regulatory Standard

A hearing under Part 710 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," *i.e.*, "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). It is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).² After due deliberation, I have determined that the individual's access authorization should not be restored. The specific findings that I make in support of this decision are discussed below.

² Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

III. The Notification Letter and the Security Concerns at Issue

As the bases for security concerns under Criterion F, the Notification Letter cites the following:

- (1) During a February 12, 2002, PSI, the individual stated that he had not used any illegal drugs other than cocaine. However, during his April 7, 2008, evaluation by the DOE psychiatrist, the individual stated that he had used marijuana while in high school.
- (2) The individual stated during the psychiatric evaluation that he drank less than one can of beer per each occasion he drank while in high school; however, when he was later questioned regarding his experience of hangovers, he indicated that he has not experienced a hangover since he was in high school.
- (3) The individual stated twice during the April 7, 2008, psychiatric evaluation that the last time he drank alcohol was just before his PSI on February 4, 2008. After being told that he would be sent for laboratory tests, which should be negative in light of the fact that he stated he had not had any alcohol recently, he stated that he had taken some cough medicine the week prior. Only after being informed that the cough medicine would not affect the test results unless he had large quantities of the medicine, he admitted that he had a beer with dinner on April 5, 2008.

Exhibit 1. The individual's failure to provide truthful responses in the 2002 PSI and the April 2008 psychiatric evaluation raises questions about his reliability, trustworthiness and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines) at ¶ 15.

As the bases for security concerns under Criteria H and J, the Notification Letter cites the following:

- (1) In her April 20, 2008, report, the DOE psychiatrist concluded that the individual met the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition, Text Revision (DSM) criteria for Alcohol Dependence, with Physiological Dependence.
- (2) The individual was arrested and charged with DWI on December 22, 2007.
- (3) The individual was arrested and charged with DWI on October 3, 2007.

Exhibit 1. The above information clearly constitutes derogatory information that raises legitimate questions regarding the individual's eligibility for access authorization. The excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, and can raise questions about a person's reliability and trustworthiness. *See Adjudicative Guidelines* at ¶ 21.

Finally, as the basis for security concerns under Criterion L, the Notification Letter cites the individual's statement during the April 7, 2008, psychiatric evaluation that he had expressed some suicidal threats to his wife in the hope of changing her decision to leave him. Exhibit 1. This event occurred in 2006, and the individual has since been divorced. Hearing Transcript [hereinafter Tr.] at 112-13, Exhibit 15 at 4. Nonetheless, unusual conduct such as this calls the individual's judgment into question, and therefore raises questions about his reliability and ability to protect classified information. See Adjudicative Guidelines at ¶ 15.

IV. Hearing Testimony

A. The Individual's Coworker

One of the witnesses at the hearing has worked with the individual for the past two years, and had also played a season of softball with him approximately six years ago. Tr. at 98-99. He testified that the individual is a good employee who is well-liked and who can be counted on to do his job. *Id.* at 99-100. He added that, unlike with respect to some employees, he has never had reason to question the individual's honesty or integrity, and knows him to be a truthful person. *Id.* at 100, 102-03. He stated that, when he played softball with the individual, they would "once in a while" have a couple of drinks, but that he never saw the individual intoxicated. *Id.* at 102. Acknowledging the importance of family to the individual, the coworker testified that, on these occasions, "he'd maybe drink one and he'd leave and go with his wife and kids." *Id.* at 100.

B. The Individual's Friend and Former Coworker I

The first of the individual's friends to testify at the hearing met the individual at work eight years ago, and described the individual as a good employee who is "[v]ery well-liked. He has a great sense of humor." *Id.* at 73. He stated that he knows the individual to be truthful, *id.* at 83, and "[v]ery serious about his family." *Id.* at 77. His friend described the individual as experiencing, during the his recent divorce, "[j]ust sadness, kind of disbelief that it was really happening to him, and the worry of his children, and things like that." *Id.* at 74. The individual took the divorce "as hard as most that I have seen, . . ." *Id.* However, he has since returned to normal and is the "happy-go-lucky" person he knew before. *Id.*

Outside of work, the individual's friend has participated in various activities with the individual, such as softball, deer hunting, and attending their children's birthday parties. *Id.* at 75. On occasion, before or during their softball games, which took place about six years ago, they would drink some beer together, but never "to excess or anything like that," and "[n]ot once" did his friend think that the individual had a drinking problem. *Id.* at 75-77. He testified that he spent less time with the individual around the time of his divorce, and therefore was not aware that the individual had begun drinking more. *Id.* at 77-78. He has seen the individual two or three times away from work in 2008, at their daughters' birthday parties, and he never saw the individual drink on any of these occasions. *Id.* at 78-79.

C. The Individual's Friend and Former Coworker II

The second friend of the individual to testify at the hearing met him through work in 2004. He worked with the individual for about one year and testified that the individual "was energetic, hard-working, you know, always eager to help out, just a good guy to hang out with." *Id.* at 86. He found the individual to be honest and reliable, and was aware of no coworkers who did not. *Id.* at 86-87.

The two remained friends after they stopped working together, and in the past three or four years, have engaged in various activities, such as car shows, barbecues, riding 4-wheelers, and taking their kids to water parks, and have talked on the phone frequently. *Id.* at 87. His friend testified that after the individual was separated from his wife "he kind of secluded himself a little bit. You could tell that he was, you know, pretty hurt about it, . . ." *Id.* at 92. Although not able to say that the individual has since "bounced back a hundred percent," he testified that he has "definitely" made progress in getting over his hurt feelings. *Id.* at 93.

The individual's friend was aware that he was having problems with alcohol, as the individual called him to bail him out after one of his DWI arrests. *Id.* at 90. The individual "likes to keep a lot of things personally, but I do know the struggles he faces and what he goes through." *Id.* at 90. His friend knows that the individual attends daily Alcoholics Anonymous (AA) meetings. *Id.* "I usually will talk to him before or after, and he said he's either leaving a meeting or getting ready to go to a meeting." *Id.* at 90-91. Over that past five or six months, they have seen each other about three or four times per month, and he has not noticed alcohol at the individual's house during this period, or suspected that he might be drinking. *Id.* at 88-89. He stated that the individual's number one priority "would be his girls, his daughters. I would say number two would probably be his job, his career, his livelihood, but mainly it's his daughters." *Id.* at 95. The individual's friend believes he will be successful in maintaining his sobriety, because he is "the type of person that, if he says he's going to do something, he usually does it, . . ." *Id.* at 96.

D. The Individual's Former Mother-In-Law

The mother of the individual's ex-wife has known him for ten years, and until the individual's divorce, saw him once every one or two weeks for family dinners and visits. *Id.* at 51-52. She stated that, before the divorce, she saw him drink "maybe twice" and that her daughter never expressed any concern to her about his drinking. *Id.* at 53.

She testified that the individual took his separation and divorce "very hard" and that he was "blind-sided by the fact that my daughter asked him for a divorce and left. I think he was very grieved and depressed. I think he was depressed and just he was not himself for that short period of time. He was so sad. He was just very upset." *Id.* at 55. She had heard from her daughter that the individual had threatened suicide, but she does not "think he meant what he said. I think he said things out of anger and out of emotion . . ." *Id.* at 57. She believed the individual was trying to "get across to [his wife] how much he loved her and how much he wanted his family back." *Id.*

She knows the individual has since received counseling and now “he’s back like he was before all of -- before the divorce happened, and I see it through my granddaughters as well, . . .” *Id.* at 59. Her daughter and the individual share custody of their children. *Id.* at 60. She described the individual as an “excellent father” and has no concern about his judgment or whether he can be trusted with her granddaughters. *Id.* “I think the world of him.” *Id.* at 57.

She further testified that she has seen the individual in 2008 “[p]robably every couple of weeks,” that he seems to be doing well and she has no reason to think that he has been drinking in the last six months. *Id.* at 64. She has not seen alcohol in the individual’s home. *Id.* at 69. The individual’s has told her that AA has helped him and he “felt like he was back on track and that, you know, he just wants to go on with his life and have a good home for the girls.” *Id.* at 62. She has faith that the individual will succeed, *id.* at 73, and if she thought he was slipping, she would talk “very directly” with him and tell him to get help. *Id.* at 67.

E. Licensed Professional Counselor

The licensed professional counselor who testified at the hearing directs the Employee Assistance Program (EAP) at the facility where the individual works. *Id.* at 13. According to the counselor, the individual first came to the EAP regarding marital difficulties, and she referred the individual to another EAP counselor who is a licensed marriage and family therapist. *Id.* at 13-14. The individual was later referred again to the EAP after he reported his October and December 2007 DWI arrests. *Id.* at 15. The counselor testified that after the first arrest, it was her impression that the individual suffered from alcohol abuse. *Id.* at 18.

After the second arrest, she found that he met criteria for alcohol dependence, and referred the individual to a five-week intensive outpatient program run by the EAP. *Id.* at 18-19. The individual completed this program on February 19, 2008. *Id.* at 23; Exhibit D. She also recommended that the individual, after completion of the outpatient program, attend aftercare and AA meetings, and meet with her once per month to discuss alcohol issues, while continuing to see the other EAP counselor regarding family issues. Tr. at 15-16, 21-22. She testified that she has met with the individual nine times so far in 2008. *Id.* at 24. Over the course of these meetings, she has verified that the individual has attended AA at least three times per week, which was her recommendation. *Id.* at 26. The individual also continues to attend aftercare meetings, run by the EAP, and the facilitator of those meetings has informed the counselor that the individual “is attending and that he is participating well and is an asset to the group, actually.” *Id.* at 28.

The counselor does not believe that “drinking, at least at any frequency, was a part of [the individual’s] marriage.” *Id.* at 29. However, after his marriage ended “rather abruptly,” he “entered into the world of being single and the pressures of being single, and I think that his -- his alcohol intake went right along with the activity of trying to date, trying to socialize.” *Id.* at 30. It is her understanding that the individual last drank alcohol on April 5, 2008. *Id.* at 44. In her sessions with the individual, they work on “relapse prevention,” *id.* at 28, and the counselor opined that the individual is “[a]bsolutely” now in a better position to deal with life stressors, and

has more tools to avoid relapse. *Id.* at 31. Nonetheless, she believes that individual will be at a low risk of relapse only after he has been abstinent for twelve months. *Id.* at 32, 39. As of the time of the hearing, she characterized the risk as “moderate – low moderate.” *Id.* at 39.

Regarding the individual’s suicide threat, the counselor does not believe that it was the product of a mental illness, instead describing it as “a desperate attempt to keep his wife from actually leaving, and I think it was situational. I don't think he had any intent or plan to actually follow through with any suicidal threat.” *Id.* at 16-17. The counselor has seen “lots of folks” respond in this way when in a similar position “and out of desperation, sometimes folks say things in the height of stress that says, you know, ‘I'm going to push your button and see if this works.’” *Id.* at 38. While the threat was a “really stupid thing” to do, it does not give the counselor any reason for concerns about his judgment going forward. *Id.* at 38-39.

F. The Individual

The individual acknowledged that he was not truthful in his 2002 PSI when he stated that that he had never used any illegal drugs other than cocaine. *Id.* at 106; Exhibit 23 at 24. He said he does not remember why he failed to reveal in the PSI that he had tried marijuana in high school. *Id.* at 147. Regarding telling the DOE psychiatrist during his April 2008 evaluation that he had experienced hangovers in high school, he stated at the hearing that he does not know if they were, in fact, hangovers. *Id.* at 111. “[S]ometimes I'd wake up sick, but more tired than anything, you know, not -- not hung over to where, you know, I was puking and just laid in bed all day and didn't do nothing.” *Id.* The individual estimated that it would take five or six drinks to make him feel bad the next morning, and that he would have this much to drink “on occasions” in high school. *Id.* at 148.

As an explanation for why, during his interview with the DOE psychiatrist, he initially said that he last drank in February 2008, when he in fact had a beer two days prior to the April 7, 2008, interview, the individual testified, “I guess I was just nervous, you know. I was pretty nervous about going to see her. You know, I just wasn't thinking.” *Id.* at 112. He later testified that he did not know why he was not forthcoming with this information until after the DOE psychiatrist told him she would be testing his blood for indications of recent drinking. *Id.* at 149-50; Exhibit 11 at 10, 11.

The individual testified that, on the occasions he drank in the approximately ten years he was with his ex-wife, ending in 2006, he would usually have “about one” drink, but about once per month would have five or six beers. *Tr.* at 110-11. However, after his wife left him in late 2006, *id.* at 112, “it finally hit me that this was it, [T]hat's when I started, you know, drinking a little more and a little more after that, and I was just -- I don't know, I was just trying to kill the pain, I guess.” *Id.* at 118.

The individual described the intensive outpatient program to which he was referred, saying it gave him “a better understanding” of the harm, trouble, and expense that can be caused by alcohol. *Id.* at 121. He stated that he still attends weekly aftercare meetings. *Id.* at 127. “It's

voluntary, but I go because I like it.” *Id.* at 128. He intends to continue to attend these meetings in the future, as well as sessions with his two EAP counselors as long they feel it is beneficial to him. *Id.* at 129.

He testified that he tries to attend AA meetings every day, but that he sometimes does not when he is with his daughters, and he tries to “double up” meetings on other days when this happens. *Id.* at 122. The individual stated that he has a sponsor, but that recently he has been difficult to contact. *Id.* at 124-125. “[H]e’s just got too much on his plate right now, and I’m getting ready to find me somebody else. *Id.* at 125. He testified that AA has been and continues to be good for him, *id.* at 124, that “you learn something new every day,” *id.* at 126, and that he intends to attend AA meetings for the rest of his life. *Id.* at 129.

The individual admits that he understood the recommendation of the intensive outpatient program was that he was to abstain completely from drinking. *Id.* at 119, 151. However, he offered no explanation in his testimony as to why he drank at least once while he was in the program and once in April after completing the program in February 2008. *Id.* However, he testified that he no longer keeps alcohol in his house, *id.* at 129-30, and his future intention “is not to drink anymore and get my life, you know, straightened out.” *Id.* at 129.

G. The DOE Psychiatrist

The DOE psychiatrist was present throughout the hearing and testified last. She explained that, in her interview of the individual, the problem was “the credibility of his alcohol use history as he reported it. . . . [I]t seemed like he would give bits and pieces of information, especially if incriminating, only in stages.” *Id.* at 156. Nonetheless, the individual’s history of blood chemistries was consistent with his report that he was a moderate drinker prior to 2007. *Id.* at 157.

The psychiatrist testified that she was disturbed at the time of her evaluation by “the fact that it was very clear that he understood that the recommendation of the treatment program was for him to be completely abstinent and yet he was not.” *Id.* at 158. This, combined with the fact that “he still believed he did not have a problem with alcohol,” led to

not a very good prognosis, as far as I was concerned, and that is the reason why I thought that, despite the fact that he had, quote, unquote, graduated from the program, the two facts, that he did not think he had a problem with alcohol and he continued to drink, that it really puts him at high risk, in my opinion, and that he was in no way, in my mind, even at a stage of true recovery.

Id.

The psychiatrist recommended in her report that the individual must, to demonstrate adequate evidence of rehabilitation, “[p]roduce documented evidence of attendance at Alcoholics Anonymous for a minimum of 100 hours with a sponsor, at least twice a week, for a minimum of one year and be

completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of two years.” Exhibit 11 at 17. Were the individual to fulfill the above requirements for adequate rehabilitation, “2 years of absolute sobriety would be necessary to show adequate evidence of reformation.” *Id.* at 18. Otherwise, “3 years of absolute sobriety would be necessary to show adequate evidence of reformation.” *Id.*

The psychiatrist testified that two years of sobriety was “really probably the lowest standard anybody could give, because of the reasons that I've said, you know, if they go after that one year, the highest risk of relapse, and they continue to do well, the more we could really be reassured that this guy will have low risk.” *Tr.* at 161. She stated that she would depart from this recommendation if, at the time of the evaluation, she found an individual was, among other things, in treatment, had good insight, was compliant and internally motivated. *Id.* at 161-62. But even in such a case, a minimum of twelve months of sobriety would be required. *Id.* at 162.³ In any case, based on what she had heard at the hearing, the psychiatrist stated, “I don't think I'm changing my diagnosis, and I don't think I am changing my recommendations.” *Id.* at 156.

Nevertheless, the psychiatrist acknowledged that there have been positive changes since her evaluation. In addition to his abstinence since April 2008, the individual is “going to AA; that's different. He's doing what he -- now he's going to aftercare, and he's doing the AA with a sponsorship, he's trying to get a sponsor, so he is doing what he -- what the treatment professionals are recommending to him.” *Id.* at 189-90. The psychiatrist also opined that there was “better hope” for the individual because his alcohol dependence was caught at an early stage, *id.* at 193, though this fact “did not really influence much my treatment recommendations, because of the more overwhelming risk factors” *Id.* at 192. On balance, the psychiatrist characterized the present risk of relapse as “moderate to low moderate.” *Id.* at 203.

Regarding the role denial may have played in the individual's failure to be forthcoming in his reported history of alcohol use, the psychiatrist stated that

the denial of the illness is usually in the minimization, but here in this particular instance, quite frankly, I could not just really entirely rule out that the inconsistencies were not because of a secondary gain, which is much more a conscious effort to appear good for the purposes of this interview, and the reason why I'm saying that is he had been much more upfront in a treatment setting, but not in my setting.

³ Some of the DOE psychiatrist's hearing testimony focused on whether, in fact, the individual met one of the DSM criteria for alcohol dependence, “tolerance, as defined by . . . markedly diminished effect with continued use of the same amount of the substance.” *Id.* at 173-85; Exhibit 11 at 14. However, the psychiatrist testified that, even if she had concluded that this criterion was only “suspect” and that the individual did not meet sufficient criteria for alcohol dependence, “the diagnosis would have been he was suffering from alcohol abuse and met partial criteria for alcohol dependence.” *Tr.* at 202-03. In that event, the psychiatrist “would have the same recommendations, because of what I've already mentioned many times, that in that setting, you treat them as if they are alcohol dependent.” *Id.* at 203.

Id. at 199. However, the psychiatrist testified that she thinks, “more likely than not, especially after this process, he will be much more upfront in future interviews about his substance use.” *Id.* at 198.

Finally, the psychiatrist characterized the individual’s suicide threat as not being a normal response, but also not a sign of a mental illness. *Id.* at 163. Rather, her impression was that it was a “manipulative gesture to convince the wife to stay.” *Id.* The psychiatrist noted that the individual “did not have significant associated symptoms of depression, other than just the normal reaction to the surprise of a divorce, . . .” *Id.* at 164. “I don't think it's fair to generalize that, globally, that he has a judgment problem, per se. He might -- the most that you could say is he might manifest judgment problems when it comes to relationships, . . .” *Id.* at 197.

V. Hearing Officer Evaluation of Evidence

Considering each of the relevant security concerns in turn, I first note that there appears to have been definite agreement at the hearing between the DOE psychiatrist and the licensed professional counselor that, while the individual has progressed in his recovery efforts, he clearly has not attained the length of time in sobriety necessary for either of the experts to rate his current risk of relapse as low. In the absence of such favorable expert opinion, I believe the risk that the individual will drink in the future is not yet low enough that his clearance should be restored at this time. *See* Adjudicative Guidelines at ¶ 23(d) (citing a favorable prognosis by a duly qualified medical professional as a condition that could mitigate a security concern related to alcohol consumption). *See also Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”). As such, the legitimate security concerns raised under Criteria H and J have not been sufficiently mitigated.

As for the concerns raised under Criterion F, I am troubled that the individual has not been consistently reliable in reporting his past use of marijuana and alcohol. On one hand, I find it difficult to believe that the individual’s failure to disclose his use of marijuana in high school was intentional, given that the individual at the same time revealed his more recent use of cocaine. I am not as certain that the individual’s failure to accurately report his use of alcohol was an involuntary product of denial. In this respect, I note the testimony of the DOE psychiatrist that the individual was more honest in the context of treatment than he was in her interview of him. Whether or not intentional, however, the effect is the same: It does not appear that the DOE can consistently rely on this individual to accurately disclose information, at least when it is not in his interest to do so. While recognizing the role that denial may play, I believe it is simply too soon to tell whether this unreliability will wane as the individual progresses further in his recovery from alcohol dependence.

I do, however, conclude that the concern raised under Criterion L by the individual’s suicide threat has been sufficiently mitigated. This was clearly an isolated occurrence, and none of the witnesses at the hearing, expert or lay, testified that they believed it to be a serious threat. I ultimately agree with the opinions of the licensed professional counselor and the DOE psychiatrist that this one-time situational incident is not reflective of the individual’s judgment generally.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises security concerns under Criteria F, H, J, and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth evidence to sufficiently mitigate the security concerns advanced by the LSO under Criterion L, but not with respect to Criteria F, H, or J. I therefore cannot find that restoring the individual access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: December 18, 2008